

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
W. A. MIGHT,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 608

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$25.00 civil penalty assessed for an alleged violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 11th day of September, 1974, at Spokane, Washington; and appellant, W. A. Might, not appearing and respondent, Spokane County Air Pollution Control Authority, appearing through its attorney, James Emacio; and Board members present at the hearing being Chris Smith (presiding) and Walt Woodward and the Board having considered the sworn testimony, records and files herein and closing argument by counsel and having

1 entered on the 10th day of December, 1974, its proposed Findings of
2 Fact, Conclusions of Law and Order, and the Board having served said
3 proposed Findings, Conclusions and Order upon all parties herein by
4 certified mail, return receipt requested and twenty days having elapsed
5 from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order and the appellant having paid the civil penalty;
8 and the Board being fully advised in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 10th day of
11 December, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 7th day of January, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 Walt Woodward
18 WALT WOODWARD, Chairman

19
20 Chris Smith
21 CHRIS SMITH, Member

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This matter, an appeal of a \$25.00 civil penalty assessed for an alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board, Chris Smith (presiding) and Walt Woodward, at an informal hearing in Spokane, Washington at 9:30 a.m., September 11, 1974.

Appellant, having requested this hearing, made no appearance. Respondent appeared through its attorney, James Emacio. JoAnn Ames, Spokane court reporter, recorded the testimony.

Witnesses were sworn and testified. Counsel for the respondent made

EXHIBIT A

1 a closing argument.

2 On the basis of the testimony heard, and closing argument by counsel,
3 the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I.

6 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3rd
7 Ex. Sess., has filed with this Board a certified copy of its Regulation I
8 containing respondent's regulations and amendments thereto.

9 II.

10 On April 26, 1974, Doug Pottratz, employed by respondent, observed
11 smoke emitting from property at 125 North Flora Road, in unincorporated
12 Spokane County. He investigated the source and determined it to be an
13 open fire approximately five feet in diameter, containing garden waste,
14 lumber and plastic pipe. Mr. Pottratz issued a notice of violation to
15 appellant on that date. From this notice of violation, respondent issued
16 a civil penalty for \$25.00, which is the subject matter of this appeal.

17 III.

18 Section 6.01 of respondent's Regulation I provides that

19 . . .

20 5. Open fires may be allowed by permit only:

21 a. Permits shall be available at local fire departments and
22 local fire control district offices and shall be in force
for one (1) year only.

23 b. In areas where refuse service is available, either municipal
24 or commercial, said permit shall be valid only for the
25 burning of dry garden trimmings, tree clippings, lawn
26 rakings, dry leaves and needles, and for periods not to
27 exceed three (3) weeks in the Spring and three (3) weeks
in the Fall. The permit periods, to be designated by
the Board or the Control Officer, shall be announced by
public notice.

FINDINGS OF FACT,

c. Only the materials noted herein shall be burned. The presence of any other material in an open fire shall constitute a violation and the person who owns or controls the property on which said violation occurs shall be subject to revocation of the permit, shall be required to extinguish the open fire and shall be subject to the penalties as set forth in Section 2.11 of this Regulation.

. . . .

IV.

The Spokane County Air Pollution Control Authority Board established open burning periods for disposal of residential garden wastes during designated periods in the spring and fall of each year. Such burns are permitted in those areas lying outside of the federally designated urban area. Before each burn period, the Board causes to be published in newspapers of general circulation in Spokane County a map designating those areas where burning is permitted.

V.

Appellant's property is located outside, but in close proximity to, the line encompassing the designated burn area.

It is doubtful whether the appellant, using the map reproduced in the newspaper, could have determined that his property lay outside the permitted burn area.

VI.

Any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Pollution Control Hearings Board comes to these

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I.

There was a violation caused by appellant of Section 6.01 of respondent's Regulation I on April 26, 1974.

II.

Appellant's property is within the jurisdiction of the Spokane County Air Pollution Control Authority and subject to the restrictive open burning provisions of respondent's Regulation I.

III.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal is denied; the notice of violation is sustained, but payment of one-half the \$25.00 civil penalty (\$12.50) is suspended pending no similar violations for a period of six months from the date this Order becomes final.

DONE at Lacey, Washington this 10th day of December, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Chris Smith
CHRIS SMITH, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER